IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1497 OF 2005
IN
CRIMINAL APPEAL NO. 228 OF 2005

Vishvanath Ramcharitra Jha ... Applicant

V/s

The State of Maharashtra & Ors. ... Respondents

Shri V.S. Paradkar for applicant
Shri A.M. Shingarpure, APP for the State

Coram : V.M. Kanade, J.
Dated : 30.03.2005

P.C. :-

. I have heard learned counsel appearing for applicant and APP for the State.

. Learned counsel appearing for the applicant states that the applicant was convicted for an offence punishable under section 304(Part-II)_ read with section 109 of Indian Penal Code and was sentenced to suffer R.I. for 7 years and to pay a fine of Rs.200/-. In default of payment, further R.I. for 6 months.

. The prosecution case is that applicant had a grudge against the deceased who removed him from the service. The applicant along with accused Nos. 1 and 2 had threatened the deceased and his son and on the date of incident, the accused Nos. 1 and 2 assaulted the deceased with a wooden stick. As a result of which, he succumed to the injuries and died. Learned counsel appearing on behalf

of the applicant submits that so far as the accused No.3 is concerned, he was not present at the time when incident took place. He submits that the applicant has examined two witnesses to establish this fact. It is further submitted that it is an admitted position that only accused Nos. 1 and 2 have assaulted the deceased with stick. He submits that there is no evidence to indicate that the applicant had instigated and abeted the offence which was committed by the accused Nos. 1 and 2.

. I have perused evidence of P.W.1 and P.W.2. P.W.2 in his evidence has stated that accused Nos. 1 and 2 assaulted the deceased and accused No.1 gave blow by stick on his head and back.He has not stated in his evidence that accused No.3 was present at the time when incident took place. The trial court has held that since the threat was given by the accused Nos. 1 to 3 to the deceased, that clearly established that accused No.3 had instigated the accused No.1 and 2 to assault the deceased. In my view, this finding regarding the abetment is not based on sufficient evidence. Prima facie case is made out by learned counsel for applicant for grant of bail. The applicant has already undergone more than 1 year in jail.The applicant in the circumstances is released on bail on a sum of Rs.5000/- with one or two sureties in like amount. Accordingly, application is disposed of.

Certified copy expedited.

(V.M.Kanade,J.)